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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/774,231	02/06/2004	Ajit Karmaker	JPP-1284NP	8164

34214 7590 12/27/2006  
PENTRON CORPORATION  
53 NORTH PLAINS INDUSTRIAL ROAD  
WALLINGFORD, CT 06492

EXAMINER
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BUMGARNER, MELBA N

ART UNIT	PAPER NUMBER
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3732

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	12/27/2006	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

## Office Action Summary

Application No.

10/774,231

Applicant(s)

KARMAKER ET AL.

Examiner

Melba Bumgarner

Art Unit

3732

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 16 October 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-47 is/are pending in the application.
- 4a) Of the above claim(s) 35-47 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-34 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 2/6/04, 8/4/04, 9/17/04.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Applicant's election of Species A, claims 1-34 in the reply filed on October 16, 2006 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).
2. Claims 35-47 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim.

### ***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 1-30 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Recitation of "the surface" in claim 1, "the filler" in claim 13, lack sufficient antecedent basis. The dependent claims do not select one of the alternative choices. It is unclear what is meant by "metals or alloys of . . . or mixtures" in claim 14 and "material" in claim 18.

### ***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Art Unit: 3732

6. Claims 1-8, 10, 11, 14-18, 20-27, 30, 31, and 33 are rejected under 35 U.S.C. 102(b) as being anticipated by Lee et al. (6,033,582). Lee et al. disclose a method of making a post having material attached comprising applying a plasma treatment to the surface of the post (column 4 line 9) and applying resinous filling material to the surface-treated post (column 14 line 38). The treatment may take place in room temperature (column 8 line 54). The treatment takes place in an atmosphere containing oxygen and carbon tetrafluoride (column 6 line 61). The treatment takes place in the range of few seconds to two hours (example column 20 line 55). More than one treatment is understood to be treatment with different gases. The post is fabricated of a metal of stainless steel (column 11 line 67), ceramic of amorphous glass (column 14 line 60), composite material of polyolefin (column 13 line 30). Patentable weight is not given to the intended use of the product as the product is capable of use as an obturator. The resinous filling material comprises polymeric material of polyolefins (column 14 line 40), filler comprising silica or glass (column 14 line 59), bioactive filler of hydroxyapatite (column 8 line 15).

***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 9, 12, and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lee et al. in view of Seeram et al. (6,287,122). Lee et al. disclose a method that shows the limitations as described above; however, they do not show composite material comprising fiber-reinforced material. Seeram et al. teach a post of fiber-reinforced composite material. It would have been

obvious to one having ordinary skill in the art at the time the invention was made to modify material of Lee et al. in order to reduce stress and control stiffness of the post in view of Seeram et al. It is known to one of ordinary skill in the art for matrix of polymerizable material to comprise polymerization initiators. The fiber comprises silica.

9. Claims 28 and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lee et al. Lee et al. disclose a method that shows the limitations as described above; however, they do not show the bioactive filler comprising bone. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify bioactive filler of Lee et al. to comprise bone as they teach devices with fillers of biological species. It would have been an obvious matter of choice to one of ordinary skill in the art as to the particular size of the bioactive filler.

10. Claims 32 and 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lee et al. in view of Blackwell et al. (6,391,940). Lee et al. disclose a method that shows the limitations as described above; however, they do not show the resinous material bonded at bond strength greater than about 2.3 MPa. Blackwell et al. teach the use of resinous material having bond strength with metal structure of greater than 2.3 MPa. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the method to have the material of Blackwell et al. in order to use a material with superior adhesive strength.

***Allowable Subject Matter***

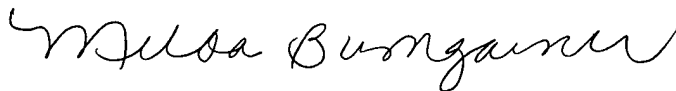
11. Claim 19 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

*Conclusion*

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Melba Bumgarner whose telephone number is 571-272-4709. The examiner can normally be reached on Mon-Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cris Rodriquez can be reached at 571-272-4964. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Melba Bumgarner  
Primary Examiner